

### **Development Community Uncertainty**

EEP staff is aware of a level of uncertainty in the development community over the mandates of the new session laws. Sentiments expressed to EEP staff have included a lack of understanding about how to contact and negotiate with mitigation bankers, who to contact, whether banks in question have legitimate available credits, concern over project delays because of a lack of timely responses (or no response in some cases) from banking companies. Developers also may simply prefer to be allowed to make their own business decisions on how to spend their money.

### **Potential Impacts to NCDOT**

Although S.L. 2009-337 allows governmental entities including NCDOT the option of utilizing EEP's ILF programs, EEP believes that the new law has the potential to affect the production and consumption of unallocated credits in EEP's NCDOT mitigation program, with the possibility of inefficiency in delivering NCDOT mitigation.

### **NCDOT Historic Surplus Credits**

The most direct consequence of the new legislation on the NCDOT mitigation program occurs when EEP is unable to accept new payments in an area where NCDOT has significant historic unallocated credits. Most of the historic unallocated credits were developed prior to the formation of EEP, and were transferred to EEP for management at the inception of EEP. EEP works directly with NCDOT to decrease unallocated mitigation by using it to meet new ILF requirements, thereby providing revenue to NCDOT. S.L. 2009-337 and 2008-152 have the potential to prevent EEP from accepting new mitigation payments, thus decreasing the ability to draw down historic unallocated credits. This will eliminate a revenue stream for the NCDOT and increase cash-flow demands required to implement the NCDOT mitigation program.

### **Less Efficient NCDOT Mitigation Projects**

Historically, EEP has been able to develop appropriately sized projects in order to meet both NCDOT's mitigation needs and those for EEP's other ILF applicants. This allows EEP to meet mitigation need completely with the fewest number of mitigation projects. Producing fewer projects while still meeting mitigation needs results in greater economies of scale, decreased mobilization costs, reduced staffing requirements and overall efficiency in the implementation and cost-effectiveness of these programs. EEP believes the session law has the potential to negatively affect these efficiencies by decreasing non-NCDOT mitigation needs. Specifically, this may occur when:

- 1) A mitigation bank has credits available;
- 2) NCDOT has mitigation needs in excess of available banking credits;
- 3) A new project must be procured for the NCDOT program; and
- 4) Non-NCDOT mitigation needs exist that would otherwise utilize one of EEP's mitigation programs within the same watershed.

Under these conditions, EEP will be required to produce a new mitigation project to meet NCDOT's mitigation needs. When the NCDOT needs are smaller than a minimum sized project, any production over NCDOT's needs will result in unallocated credits. Since there are no other non-NCDOT mitigation needs being accepted, the full cost of the unallocated credits will be carried by NCDOT. This increases the inefficiency of these